



Appellate Division
Supreme Court of the State of New York
Second Judicial Department
45 Monroe Place
Brooklyn, N.Y. 11201
(718) 875-1300

RANDALL T. ENG
PRESIDING JUSTICE

APRILANNE AGOSTINO
CLERK OF THE COURT

*J updated
PCW*
MEL E. HARRIS
KAREN HOCHBERG TOMMER
MARIA T. FASULO
DEPUTY CLERKS

DARRELL M. JOSEPH
KENNETH BAND
ASSOCIATE DEPUTY CLERKS

September 12, 2017

Craig E. Gabbidon

15A0150
Coxsackie C.F.
P.O. Box 999
Coxsackie, N.Y. 12051

Re: 2015-00872
People v Gabbidon, Craig E.
Ind. 121/13
J - 12/23/2014 - County Dutchess

Dear Sir/Madam:

We have received your motion for a writ of error coram nobis.

The application will be placed on the motion calendar for 11/17/17.

Yours truly,

CLERK'S OFFICE

NOTICE TO: William V. Grady w/papers & Del Atwell w/papers

Dear Sir/Madam:

The above mentioned application will be placed on the motion calendar for 11/17/17.

Please serve upon the parties and file with the Court a response in the form of an affidavit or affirmation expressing your views, if any, on or before the date that this matter has been placed on the motion calendar. Please take notice that the return time has been increased to EIGHT weeks due to the regular need to request more time to respond. Counsel should submit copies of any relevant correspondence with the defendant.

Yours truly,

CLERK'S OFFICE

*A/S
11/14/17*

Note to all parties: On the return date all motions and proceedings are deemed submitted.
Oral argument is not permitted (22NYCRR 670.5[b]).

CRAIG E. GABBIDON 15A0150
COXSACKIE CORRECTIONAL FAC.
P.O. BOX 999
COXSACKIE, NEW YORK 12051

CLERK OF THE COURT
APPELLATE DIVISION
SECOND DEPARTMENT
45 Monroe Place
Brooklyn, NY. 11201

Date: August 9, 2017

Dear Clerk of the Court:

Please find enclosed a Writ of Error Coram Nobis, claiming ineffective assistance of appellate Counsel.

I hope the submitted papers are in order and well received by your office.

If there are any problems please let me know as soon as possible.

I was presented with a illegal plea offer only to be sentenced to a term not apart of my plea.

If possible please acknowledge receipt of this letter.

I thank you in advance

Sincerely yours,

Craig Gabbidon

cc: file

RECEIVED
17 AUG 15 AM 9:55
APPELLATE DIVISION
SECOND DEPARTMENT

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT**

THE PEOPLE OF THE STATE OF NEW YORK,

-----**AGAINST-----**

CRAIG E. GABBIDON

**WRIT OF ERROR
CORAM NOBIS**

**INDICTMENT NO. 121-2013
APP. NO. 2015-00872**

REC'D AUG 15 AM 9:55
APPELLATE DIVISION
SECOND DEPARTMENT

RECEIVED

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT —X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

CRAIG E. GABBIDON,
Defendant-Appellant,

State of New York)
) ss:
County of Greene)

NOTICE OF MOTION FOR
WRIT OF ERROR CORAM
NOBIS

Dutchess County
Ind. No. 121-2013
App. No. 2015-00872

RECEIVED
SECOND APPELLATE DIVISION
NEW YORK
AUG 15 2015
AM 9:55

PLEASE TAKE NOTICE, that upon the annexed affidavit of Craig E. Gabbidon, being duly sworn on the 9 day of August, 2017, and upon all exhibits attached and proceedings heretofore and herein, defendant-appellant will move this Court at a term thereof, to be held at the Appellate Division: Second Department, located at 45 Monroe Place, Brooklyn, New York, 11201, on the 23 day of August, 2017 at 10:00 O'clock in the forenoon of that day for an order vacating the Judgment of Conviction, Decision and Order of this Court affirming his conviction, and granting such other and further relief as may be just upon the ground that he was denied his right to the effective assistance of counsel under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Article 1, § 6 of the New York State Constitution on his direct appeal to this Court Because: (a) the assistance provided by appellate Counsel was

so nominal it amounted to the substantial equivalent of being assigned no counsel at all; and/or (b) if the assistance of appellate counsel was something more than nominal, it still did not reach a level of performance sufficient to satisfy an objective standard of reasonableness, and there is a "reasonable probability" that but for counsel's deficient performance, the outcome of defendant-appellant appeal would have been different.

PLEASE TAKE FURTHER NOTICE, this motion is in the nature of a Writ of Error Coram Nobis, and the answering papers, if any, shall be filled with proof of service on the undersigned in accordance with the provisions of 22 N.Y.C.R.R. § 2214A. This motion is submitted od the papers and personal appearance in opposition is neither required nor permitted.

Date August 9, 2017
Coxsackie, N.Y. 12051


Craig Gabbidon, D#75A0150
Appellant-Defendant, Pro se
Coxsackie Correctional Fac.
P.O. Box 999
Cocsackie, New York 12051

To: Hon. William V. Grady
District Attorney of Dutchess County
236 Main Street
Poughkeepsie, New York 12601

Clerk of the Court
Appellate Division: Second Department
45 Monroe Place
Brooklyn, New York 11201


Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OILE6265486
My Commission Expires 07/09/2020

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT X

THE PEOPLE OF THE STATE OF NEW YORK,
Respondant,

-against-

CRAIG E. GABBIDON,
Defendant-Appellant,

AFFIDAVIT SUPPORTING
MOTION FOR WRIT OF
ERROR CORAM NOBIS

Dutchess County
Ind. No. 121-2013
App. No. 2015-00872

State of New York)
} ss:
County of Greene)

I, Craig E. Gabbidon, being duly sworn, deposes and say:

1. I am the above name appellant in the above-entitled action and I make this affidavit in support of a Petition for a Writ of Error Coram Nobis upon the following grounds:

(a) Appellant was denied of his right to the effective assistance of counsel on an appeal as of right in violation of his State and Federal Constitutional rights; and

(b) Appellate counsel unjustifiability failed to raise a meritorious issue on appeal, and if raised, would have resulted in a reversal of the judgment or the plea being vacated; and

2. Appellant will demonstrate he is entitled to a de novo appeal from the judgment rendered.

3. On appeal, counsel raised three issues, none of which would have given appellant a reversal or vacation of the judgment

rendered in the Supreme Court of the State of New York, County of Dutchess. The issue raised by appellate counsel are as follows:

- (a) THE LOWER COURT ERROR IN DENYING THE MOTION TO WITHDRAW BECAUSE IT FAILED TO RECOGNIZE ITS OWN MISSTATEMENT OF SENTENCING LAW,
- (b) APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRAIL COUNSEL, AND (c) THE COURT SHOULD MODIFY THE SENTENCE.

COURT'S DECISION

This Court affirmed the conviction rendered on December 23, 2014, in the Supreme Court of the State of New York, County of Dutchess, with or without an opinion (Exhibit A).

PROCEDURAL HISTORY

4. I was charged by indictment No. 121-2013, with the crimes of Penal Law §130.50(2), Penal Law §130.35(2), two counts of Penal Law §130.40(2), and Penal Law §260.10(2) and was convicted in Dutchess County, Supreme Court by a guilty plea of one count of Penal Law § 130.50(2).

5. The plea agreement contained a determinate sentence to be "capped at 15 years of State Prison and two(2) and a Half(1/2) to 5yrs post-release supervision". (Which is a illegal PRS)

6. On December 23, 2014, I was sentenced by the Hon. Judge Greller, to a totally different sentence of 15yrs determinate and 10yrs post-release supervision, in total violation of the agreed

upon sentencing range.

7. I filed a timely notice of appeal and a poor person status was granted to me with the assignment of counsel, Del Atwell, 39 5th Street, East Hampton, N.Y. 11937.

8. This Court affirmed defendant-appellant conviction in a published opinion as People v. Gabbidon, 134 A.D.3d 736, 19 N.Y.S.3d 786. defendant-Appellant then applied to the New York State Court of Appeals for leave to appeal this Court's Decision and Order of affirmation. That application was then denied on March 31, 2016. People v. Gabbidon, 27 N.Y.3d 964, 56 N.E.3d 905, 36 N.Y.S.3d 625.

9. No prior application has been made to any Court to review the adequacy of the representation defendant-appellant received upon his direct appeal to this Court.

FACTS

INADEQUACY OF BRIEF FILED BY APPELLATE COUNSEL:

10. As previously set forth, the appeal herein was perfected by assigned counsel without the benefit of any correspondence between counsel and appellant. During the period between the date counsel was assigned and the date upon which the appeal was perfected, assigned counsel never discuss the specific issues which would be included in his brief, nor did defendant-appellant have the opportunity to review the brief prior to its submission to the Court. The brief,

as submitted, did not present well-reasoned points for arguments to this Court.

"On May 29, 2015, appellate counsel submitted and raised Three (3) issues on direct appeal that were without merit. i.e. the lower Court committed error in not recognizing it's own misstatement of sentencing law, and denied appellant's motion to withdraw his guilty plea based on that error; Appointed counsel (Susan Mungavin) from the Dutchess County Public Defender's Office should have recognized that the Court's advise was incorrect as a matter of law; the brief contained a final issue, that the sentence as harsh and excessive".

The brief was-poorly drafted, without merit and clearly misguided as to the facts, 'cause the motion to withdraw the guilty plea never asserted the grounds raised in appellate counsel's drafted brief.

See Ex- B.

Since counsel's appointment, defendant-appellant has contacted counsel on numerous different occasions and has not been able to get a respond nor was he ever informed of the substantive and procedural issues that would be presented in the brief prepared by appellate counsel on behalf of defendant-appellant. See Letters as Ex- C. D. E. F. G. H. I. J. K. L. M. AND N.

The only response received from appellate counsel was his termination letter dated May 6, 2016, See Ex- O.

Defendant-Appellant, went as far as contacting the Clerk of the Court Aprilanne Agostino, due to Mr. Atwell, Unprofessional ethics. See Ex- P. Q. and R.

Meritorious Issues Ignored By Appellate Counsel:

Assigned counsel did not only inadequately represent defendant-appellant upon appeal by making poorly drafted arguments unsupported by the record, but also omitted meritorious arguments upon which a reversal of the conviction should have been obtained, or the plea being vacated. Both facts in the record and prior decisional law in the jurisdiction supported these issues. In some instances the arguments should have been obvious from even a casual reading of the record, but were ignored on direct appeal.

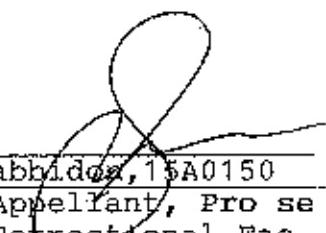
"The plea agreement stated that defendant-appellant would be sentenced to a period of post-release supervision ranging from two (2) and a half (1/2) to five (5) yrs, Not ten (10), unbeknown to the Court and Court Officers the plea agreement was in violation of statutory Law, and was illegally enforced and hastily formed."

Sadly enough, Defense Counsel, The Prosecutor, and Judge Greller, with his legal support staff all sanctioned this illegal plea components. The Court with the ultimate sanctioning of any agreements failed to ensure that defendant-appellant receive due process of law.

Lastly, these issues of the plea containing an illegal component should have been discovered by at least one (1) of the Court appointed legal professionals. The defendant-appellant had the right to be represented by a competent counsel, before, during and after his plea.

WHEREFORE, it is respectfully requested that an Order issues from this Court vacating the judgment of conviction the prior Decision and Order of this Court affirming the conviction of your deponent upon the grounds that he was deprived of the effective assistance of appellate counsel, and granting such other and further relief as may be just in the premises.

Date: August 9, 2017


Craig E. Gabaldon, 15A0150
Defendant-Appellant, Pro se
Coxsackie Correctional Fac.
P.O. Box 999
Coxsac, New York 12051

SWORN TO BEFORE ME THIS

9th DAY OF August 2017



NOTARY PUBLIC

Jennifer A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OILE6265486
My Commission Expires 07/09/2020

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

MEMORANDUM OF LAW

-against-

Dutchess County
Ind. No. 121-2013
App. No. 2015-00872

CRAIG E. GABBIDON,
Defendant,

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of appellant's motion for a Writ of Error Coram Nobis. The motion is based upon the grounds that appellant was denied his State and Federal rights to the effective assistance of appellate counsel during his direct appeal to this Court from a judgement of conviction, entered in the Supreme Court, County of Dutchess, for the crime of: Criminal Sexual act in the 1st, Penal Law §130.50 sub2.

STATEMENT OF FACTS

The facts, which provide the basis for the arguments contained within this Memorandum of Law, have already been detailed in appellant's affidavit submitted herewith and support of the instant motion. In the interest of brevity, appellant dose not reprint them here. Instead, appellant incorporates those facts into Memorandum of Law by reference, and re-alleges them as fully as if set forth here. Numbers in parenthesis preceded by "A" refer to the appellant's Exhibit "A" submitted herewith.

On or about September 29, 2016, appellant brought a Motion to Vacated Judgment under the provisions § 440.10(1)(h) of the Criminal Procedure Law to the Supreme Court of the State of New York, County of Dutchess, at a term thereof, raising the sole issues of him being deprived of his Statutory rights to Due Process of Law, and the Ineffective Assistance of Trial counsel under the Constitution of this State and of the United States of America.

"Appellant was deined of his rights to Due Process of Law, Under Article 1, § 6 of the New York Constitution, and the Fifth, Sixth, and Fourteenth Amendment of the United State Constitution." See Ex- S.

In response to appellant's motion to vacated judgment, the People argued that appellant's claim must be summarily deined based on the procedural bars contained in CPL § 440.10(1) and (2), or in the alternative, the motion ought to be deined pursuant to CPL § 440.30(4)(a), (b) and (d). Also, the People Claiming that the appellant's immigration status, the term of post-release supervision is a non-issue in his case and therefore, preclude appellant the right to enjoying the protection of our Constitution both State and Federal.

The People further contended appellant could have with due diligence made such facts of the issue appearing on the record, on direct appeal, failure to raise such ground or issue upon an appeal actually perfected by him. CPL § 440.10(2)(c). See Ex- T.

POINT ONE

THE APPELLANT HAS THE RIGHT TO CHALLENGE THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

Appellant has the right to challenge the ineffective assistance of appellate counsel collaterally by bringing a motion for a Writ of Error Coram Nobis in the Appellate Court where the ineffective assistance occurred. People v. Bachert, 69 N.Y.2d 593, 516 N.Y.S.2d 623 (1987). There is no time on the filing of collateral attacks on judgment of conviction. Cf. People v. Jackson, 78 N.Y.2d 638 (1991)

Appellant's appeal was heard and disposed of within the jurisdiction of, or in the Appellate Division, Second Department contends this is the appropriate forum in which he can challenge the effective assistance of appellate counsel.

POINT TWO

APPELLANT'S RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL ON HIS STATE COURT DIRECT APPEAL WAS VIOLATED WHEN HIS ASSIGNED APPELLATE COUNSEL OMITTED SIGNIFICANT AND OBVIOUS ISSUES WHILE PURSUING ISSUES THAT WERE CLEARLY AND SIGNIFICANTLY WEAKER.

It is well established that every state criminal has a due process right to the effective assistance of counsel at direct appeal in a criminal case. see Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985); see also Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

This requires counsel to act as an advocate, not merely as amicus curiae, and to marshal legal arguments on appellant's behalf

in order that he might have a full and fair resolution and consideration of his appeal. see Ellis v. United States, 356 U.S. 674, 78 S.Ct. 974 (1958). This also "requires that he supports his client's appeal to the best of his ability" and the brief he submits must reflect more than "a detached evalution of the appellant's claim." see Evtts v. Lucey, supra at 394

The omission of a meritorious claim cannot be excused simply because an intermediate appellate counsel would have rejected it.

In fact, the omission of a meritorious claim cannot be excused even when the claim was presented in a pro se supplemental brief and specifically rejected by the appellate court:

"It is quite possible than an attorney would have found other arguments or would have articulate in the presentetion of the case on appeal. "Jenkins v. Coombe, 821 F.2d 158, 161 (2nd Cir. 1987), cert. den., 484 U.S. 1008, 108 S.Ct. 704(1988).

Weakness Of The Issues Raised By Appellate Counsel:

Appellate counsel presented to the court an issue that was mistakenly referenced to defendant-appellant's motion to withdraw his guilty plea in the lower court. Mr. Del Atwell, without the benefit of conferring with his client, presented to the Appellate Court an issue alleged to have been litigated by defense counsel (18B) which purportedly claimed that the reason for asking for the plea back was because the Court mistakenly advised he could receive consecutive sentences.

However, this statement is misguided. At no time did defendant-appellant offer such arguments for withdrawing his guilty plea, where appellate counsel got this misguided information from is a mystery to the appellant. The only issues contained in the motion ... to withdraw the plea in the lower Court pertained to defense counsel Susan Mungavin and coercion. This is obviously a case of incompetence and borderline sabotage.

Worthy of mention is the fact that ADA Bridget Rahilly Steller, in her 'Affirmation In Answer To A Motion To Vacate A Judgment' dated October 12, 2016, indicates that "defendant Gabbidon took an appeal to the Appellate Division in which he raised three points, he made no complaint about the ten (10) years period of PRS."

She further cites (People v. Stewart, 16 N.Y.3d 839, 840-41 (2011) ("As far back as 1986, This Court has made it clear that '[w]hen, as will usually be the case, sufficient facts appear on the record to permit the question to be reviewed, sufficiency of the plea allocution can be reviewed only on direct appeal.") This argument supports appellant's reasons for moving in the form of a Writ of Error Coram Nobis, because counsel on appeal shouls have read the transcripts and detected the problem with the plea and the actual sentence. The plea says one thing and the sentence actually meaded out say another. In the interest of justice this Court should not allow this wrong to go uncorrected. This action of the sentencing court to indicate a certain range of PRS (which is illegal) and then simply choose a number so harsh and excessive of (10yrs was never

mention in the plea minutes) is baffeling. This is the issues an effective appellate counsel should have identified, researched and briefed, anything less was and is without merit. Again, if counsel would have opened a line of communication with acoellant, the opportunity to achieve a more favorable result would have been possible instead of having raised issues without any substance.

Counsel proceeded to raise issues that were clearly and significantly weaker, and totally unpreserved for review. No attempt was, nor could have been made to provide the Appellate Court with a reason for reviewing them in the interest of justice, because appellate counsel refused and ignored appellant's attempts to correspond pertaining to his direct appeal.

Meritorious Not Raised By Counsel:

Assigned counsel did not only submit substandard representation, submit poorly drafted arguments unsupported by the record, but also completely failed in his duty to marshal arguments on appellant's behalf, and as a result, did not afford appellant the quality of representation to which he was Constitutionally entitled. Most Notably, counsel did not raise the solidly meritorious arguments regarding:

"That the trial Court judgment was obtained in violation of appellant's rights to Due Process Under the Fifth, Sixth and Fourteenth amendment of this State and of the United States of America."

POINT ONE

DID THE TRIAL COURT VIOLATE APPELLANT RIGHTS TO DUE PROCESS OF LAW UNDER THE FIFTH, SIXTH AND FOURTEENTH AMEND. BY WRONGFULLY ADVISING HIM OF THE AMOUNT OF POSTRELEASE SUPERVISION HE WOULD BE SUBJECTED TOO?

In order for a guilty plea to be voluntarily, knowingly, and intelligently entered in a criminal case, the defendant must be advised about the consequences of a guilty, or more specifically, the direct consequences of that plea. The defendant-appellant must be made aware of all of the direct consequences, along with some of the collateral consequences. This give the defendant-appellant the ability to make choices he can live with.

Post-release supervision is a direct consequence of a conviction, which the defendant-appellant who plead guilty has the right to know it's terms, see People v. Catu, 4 N.Y.3d 242, 792 N.Y.S.2d 887, 825 N.E.2d 1081 (2005), People v. Hill, 9 N.Y.3d 189, 849 N.Y.S.2d 13, 879 N.E.2d 152 (2007). As the Court of Appeals explained in "People v. Catu," because a defendant-appellant pleading guilty to a determinate sentence must be made aware of the Post-release supervision component of that sentence in order to voluntarily, knowingly, and intelligently choose among the alternative courses of action, the failure of a Court to advise of post-release supervision requires a reversal of the conviction, i.e., vacatur of the plea. "The Court further indicated in that the Constitutional defect lies in the plea itself and not in the resulting sentence,

vacatur of the plea is the remedy for a Catu error since it returns a defendant to his or her original status before the Constitutional infirmity occurred. See People v. Selikoff, 35 N.Y.2d 227, 360 N.Y.S.2d 623, 318 N.E.2d 784 (1974).

Here, County Court erroneously incorrectly informed that he would receive two (2) and a (1/2) to five (5) years of post-release supervision, when by operation of law he was required to receive a term of five (5) to (20) years of post-release supervision. See People v. Miller, 62 A.D.3d 1047, 878 N.Y.S.2d 489 (2009).

The Court in this matter when explaining the maximum post-release supervision that the defendant-appellant would be exposed to indicated a "cap" of fifteen (15) yrs determinate sentence in state prison and two (2) and a half (1/2) to five (5) yrs of PRS. "NOT TEN".

The supreme Court, County of Dutchess, was clearly mistaken as to the maximum of PRS that could be imposed in this case, see PL 70. 80(4), which established that the amount of PRS the defendant-appellant could and would be exposed to is five (5) to twenty (20) yrs, not two (2) and a half (1/2) to five (5) yrs for the crime of PL 130.50(2).

The Court mislead the defendant-appellant and raised substantial doubt that had the defendant-appellant known the true amount of PRS he would have been subjected to by pleading guilty, he never would have accepted such plea deal. While the Court imposed a legal term of PRS, the offer made on the record by the Court to induce defendant-appellant to plead guilty was illegal and violated defendant-appellant's Due Process of Law.

POINT TWO

**DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE
ASSISTANCE OF TRIAL COUNSEL.**

Defendant-Appellant was denied the effective assistance of trial counsel.

Defendant-Appellant was represented by two (2) Court-Appointed attorney's from the Dutchess County Public Defender's Office and one (1) independent attorney appointed through the 18B County Law. Neither representation offorded defendant-appellant with the effective assistance that he deserve.

Defendant-Appellant had the right to be represented by competent counsel who must be familiar with the legal priciples and issues governing the plea he was accepting and to benefit from the expertise of said counsel. see People v. Baldi, 54 N.Y.2d 137, 429 N.E.2d 400, 444 N.Y.S.2d 893.

Here, defendant-appellant's first attorney's, who was later relieved, was standing next to the defendant-appellant when the Supreme Court, County of Dutchess, Hon. Judge Greller, in this matter when explaining the maximum post-release supervision that the defendant-appellant would be exposed to :

The Court: "I believe it's between two (2) and a half (1/2) to five (5) yrs PRS" which violated Penal Law 70.80(4). 6/11/14, Pg14

A plea may by withdrawn by the defendant-if it was induce by an unfulfilled sentence promised by the Court, See People v. Frederick, 45 N.Y.2d 520, 410 N.Y.S.2d 555. The issue should not be

raised for the first time on appeal, see People v. Mackey, 77 N.Y. 2d 846, 569 N.E.2d 442, 567 N.Y.S.2d 639; People v. Lopez, 71 N.Y. 2d 662; People v. Pellegrino, 60 N.Y.2d 636; People v. Warren, 47 N.Y.2d 740. This Court promised the defendant-appellant that his post-release supervision would be as low as two (2) and a (1/2) yrs, and was unable to fulfill it's promise. In fact, this Court was without jurisdiction and authority to make such an offer. Because a guilty plea is equivalent to a conviction after trial, failure to move to withdraw or vacate in the trial court will likely result in the conviction being affirmed on appeal. People v. Lopez, 71 N.Y.2d 662, 529 N.Y.S.2d 465.

Suffice it to mention that when the defendant-appellant entered into the Courtroom and was prepared to accept a negotiated plea, the Court went on record to establish that the offer (as illegal) was discussed by the Court, ADA and defense counsel, and the best of which was produced was a sentence which violates the appellant's Due Process of Law.

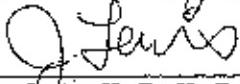
In conclusion, appellate counsel cannot be presumed to have provided the effective assistance when counsel clearly failed to raise issues which would have been reversed, if raised on direct appeal, and as a result of this, appellate counsel should be held ineffective, and appellant be granted a new appeal.

C O N C L U S I O N

FOR THE FORGOING REASONS AS RAISED IN POINT ONE AND TWO, APPELLATE COUNSEL SHOULD BE HELD INEFFECTIVE AND APPELLANT BE GRANTED A NEW APPEAL.

Date: August 9, 2017

Respectfully Submitted,
Craig E. Gabbidon 15A0150
Coxsackie Corr. Fac.
P.O. Box 999
Coxsackie, New York 12051

SWORN TO BEFORE ME THIS
9th DAY OF August 2017

NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OILR6265486
My Commission Expires 07/09/26 20

AFFIDAVIT OR SERVICE

STATE OF NEW YORK

1

GREENE

) ss.: People v. Gabbidon E. Craig
App. No. 2015-00872
) Ind. No. 121-2013

L. Craig E. Gabbidon being duly sworn, deposes and says:

1. I am over eighteen (18) years of age and reside at the Coxsackie Correctional Facility, P.O. Box: 0999, Coxsackie New York 12051-0999.
 2. On August 9, 2017, I placed and submitted a true and exact copy of the within document(s) which consist of the following: "Notice of Motion For Writ of Error Coram Nobis For Ineffective Assistance of Appellate Counsel"

in a properly sealed, postpaid, wrapper and deposited same in an official depository of the United States Postal Service, said box being under exclusive care of the New York State Department of Correctional Services and is one established for the purpose of mailing correspondence, addressed for delivery to the following parties.

APPELLATE DIVISION, SUPREME CT.
Second Judicial Department
State of New York
45 Monroe Place
Brooklyn, New York 11201

Dutchess County Dist. Att.
William v. Grady
236 Main Street
Poughkeepsie, New York 12501

SWORN TO BEFORE ME THIS
After-day of August 20 17.
D. Lewis
NOTARY PUBLIC

Respectfully Submitted,

Craig E. Gabaldon

DIN # 15-A-0150

Coxsackie Correctional Facility

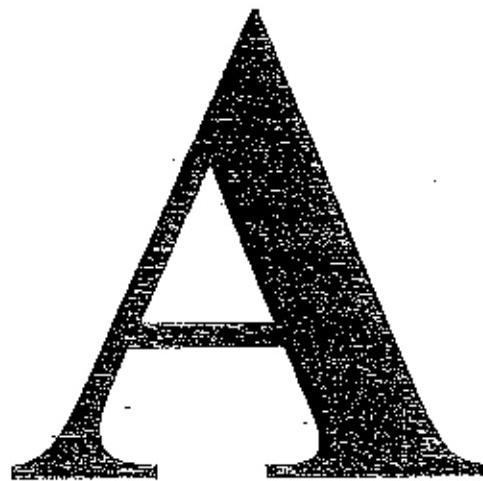
P.O. Box: 0999

Coxsackie New York 12051-0999

Jessie A. Lewis
Notary Public, State of New York
Qualified in Albany County

My Commission Expires 07/09/20 20

EXHIBIT

A large, bold, black letter 'A' is centered on the page. It has a thick, textured appearance, possibly from a high-contrast photocopy or a specific font style. The letter is oriented vertically.

DECISION AND ORDER

EX-A

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D47266

T/ltr

AD3d

Submitted - October 7, 2015

WILLIAM F. MASTRO, J.P.
L. PRISCILLA HALL
SANDRA L. SGROI
COLLEEN D. DUFFY, JJ.

2015-00872

DECISION & ORDER

The People, etc., respondent, v Craig E. Gabbidon,
appellant.

(Ind. No. 121/13)

Del Atwell, East Hampton, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of
counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County
(Greller, J.), rendered December 23, 2014, convicting him of criminal sexual act in the first degree,
upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the County Court misinformed him of his maximum
sentencing exposure were he to proceed to trial is unpreserved for appellate review, since the
defendant did not raise this specific ground in his motion to withdraw his plea (*see People v
Williams*, 129 AD3d 1000; *People v King*, 115 AD3d 986; *People v Delarosa*, 104 AD3d 956). In
any event, the court properly informed the defendant that consecutive sentences could be imposed
if he were convicted of the first two counts of the indictment, since each count as charged involved
a separate sexual act constituting a distinct offense (*see People v Colon*, 61 AD3d 772, 773; *People
v Dallas*, 31 AD3d 573, 574; *People v Gersten*, 280 AD2d 487).

Contrary to the defendant's contention, he was not deprived of the effective assistance
of counsel due to his counsel's failure to recognize and address the purported error regarding his
maximum sentencing exposure, since, as noted above, the County Court properly informed the

defendant of his maximum sentencing exposure (see *People v Cromwell*, 99 AD3d 1017; *People v Royster*, 40 AD3d 885, 886). Furthermore, the record demonstrates that the defendant received an advantageous plea, and nothing in the record casts doubt on the apparent effectiveness of counsel (see *People v Ford*, 86 NY2d 397, 404; *People v Modica*, 64 NY2d 828, 829; *People v Baldi*, 54 NY2d 137, 147). There is nothing in the record to support the defendant's claim that counsel's performance was deficient (see *Hill v Lockhart*, 474 US 52, 58; *Strickland v Washington*, 466 US 668, 687).

The sentence imposed was not excessive (see *People v Suite*, 90 AD2d 80).

MASTRO, J.P., HALL, SGROI and DUFFY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

EXHIBIT

B

NOTICE OF MOTION TO WITHDRAW PLEA

EX-B

STATE OF NEW YORK
COUNTY COURT: COUNTY OF DUTCHESS

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

CRAIG E. GABIDDON,

Defendant.

X
NOTICE OF MOTION TO
WITHDRAW PLEA

Indictment # 121/2013

(Hon. Stephen L. Greller)

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affirmation of Craig E. Gabiddon, the defendant, and upon all papers and proceedings heretofore had herein, Eric S. Shiller, Esq., attorney of record for the defendant will move this Court at a term thereof to be held in the Dutchess County Court, located at 10 Market Street, Poughkeepsie, New York on the 18th day of September, 2014, at 9:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard for an order granting the following relief:

1. For an order pursuant to Criminal Procedure Law §220.60(3) permitting the defendant to withdraw his prior guilty plea for the reasons set forth in the attached affirmation of the defendant, CRAIG E. GABIDDON.

PLEASE TAKE FURTHER NOTICE that the defendant reserves the right to make any and all further motions necessary in order to protect his rights under the United States and New York State Constitutions and under all federal and state statutes upon learning that grounds for such exist.

As to each of the above requests, for such other and further relief as the Court

may deem just and proper.

Dated: Poughkeepsie, New York
September 10, 2014

Respectfully Submitted,

ERIC S. SHILLER, ESQ.
Attorney for the Defendant
ERIC S. SHILLER LAW OFFICE, P.C.
54 Naxon Street
P.O. Box 774
Poughkeepsie, New York 12602

To: Honorable Stephen L. Greller
Dutchess County Court
10 Market Street
Poughkeepsie, NY 12601

Allison J. Stuart, Esq.
Office of the Dutchess County District Attorney
236 Main Street
Poughkeepsie, NY 12601

STATE OF NEW YORK
COUNTY COURT: COUNTY OF DUTCHESS

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

AFFIRMATION

- against -

Indictment # 121/2013

CRAIG E. GABIDDON,

Defendant.

X

CRAIG E. GABIDDON, being duly sworn, deposes and states the following:

1. I am the defendant in this matter, and pled guilty to the charge of Criminal Sexual Act in the First Degree, a class B violent felony, in violation of Penal Law §130.50(2) on June 11, 2014.
2. My lawyer at the time of my plea, Susan Mungavin, Esq. of the Dutchess County Public Defender's Office pressured and badgered me to accept the proposed disposition and plead guilty. Ms. Mungavin pressured me by telling me that if I did not accept the plea offer that I would never see my family again. Additionally in pressuring me to plead guilty, my lawyer went as far as bringing my wife, Luz Gabiddon into the County courthouse lockup on June 11, 2014 to pressure me as well into accepting the plea offer. With these tactics used by my lawyer, I did not have a clear mind and I was coerced into pleading guilty.
3. I, Craig E. Gabiddon, further contend and state definitively that I am not guilty of the charge, and maintain my constitutional right to have my suppression hearing and my jury trial in this matter. I would not have waived the right to a hearing in this matter and would not have waived my right to a jury trial in this matter, absent the extreme

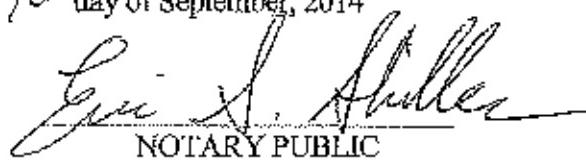
pressure my lawyer, Susan Mungavin, Esq. placed on me.

WHEREFORE, it is respectfully requested that the motion to withdraw my plea be granted in its entirety.



CRAIG E. GABIDON

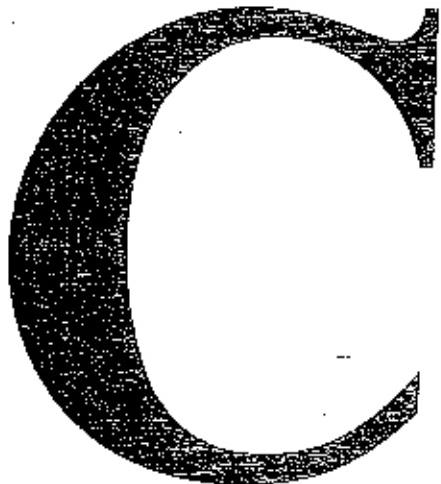
Sworn to before me this
10th day of September, 2014



Eric S. Shuler
NOTARY PUBLIC



EXHIBIT



INTRODUCTION LETTER

EX-C

Craig Gabbidon 45A0150
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, N.Y. 12051

Date: May 6, 2015

Del Atwell, Esq
39 5th Street
East Hampton, N.Y. 11937

People v. Gabbidon
App. No. 2015-00872

Dear Mr Atwell:

I hope when you gets this letter, it gets to you in the best of health. Sir. My Name is Craig Gabbidon, I am currently incarcerated at the Coxsackie Correctional Facility. I would please like to introduce myself to you again, Sir. On my receiving of the court Decision and Order informing me of my poor person relief last month, I sent you an introductionery letter to which I have not heard anything back from you.

Please contact me as soon as possible. I would like to be actively involved in my direct appeal.

ANNEXED HERETO PLEASE FIND AFFIDAVIT OF SERVICE BY MAIL

Respectfully Submitted,

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
SS:
COUNTY OF GREENE)

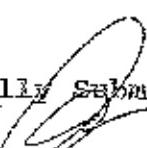
People v. Gabbidon
App. No. 2015-00872

I, CRAIG GABBIDON, being duly sworn, deposes, that on this
6 day of May, 2015, I served the foregoing # 1 page legal doc-
ument, entitled; "My second introduction concerning the assigned
representation," upon Del Atwell, Esq., by depositing the same in the
postal services here at the Coxsackie Correctional Facility, in a
properly addressed envelope, to be duly Mailed via the United States
postal service to the address set forth below, being the address -
designated for that purpose.

Dated: 5/6/15

Coxsackie, new york

Respectfully Submitted


CRAIG GABBIDON/15A0450
Defendant

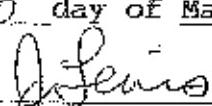
Del Atwell, Esq
39 5th Street
East Hampton, New York
11937

Coxsackie, C.R.
P.O. BOX 999
Coxsackie, NY 12051-0999

personal file; c/g

Sworn to before me this

6 day of May, 2015



NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OHLB6265486
My Commission Expires 07/09/2014

EXHIBIT

D

Ex-D

Craig Gabbidon 15A0150
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051

Date: May 28, 2015

Del Atwell, Esq
39 5th Street
East Hampton, N.Y. 11937

People v. Gabbidon
App. No. 2015-00872

Dear Mr. Atwell:

Please contact me as soon as possible when you receive this letter. I am concern of my legal liberties, due to the fact that since being assigned to my case by the Appellate Division: Second Dept., on April 13, 2015, I have yet to here anything from you either via mail or visit. So far, I have sent you two (2) letters introducing myself, and without a courtesy of a response on either. I am left completely in the dark as to any issues you are likely to rasied on my direct appeal.

Please be advise, please do not submitted my brief before I may inspect and read it. Sir...PLEASE.

Thank you for your time and understanding to this matter.

ANNEXED HERETO PLEASE FIND AFFIDAVIT OF SERVICE BY MAIL

Respectfully Submitted,

STATEMENT OF SERVICE

STATE OF NEW YORK

COUNTY OF GREENE

ss.:

People v. Gabbidon
App. No. 2015-00872I, Craig Gabbidon

1. I am over eighteen (18) years of age and resides at the Coxsackie Correctional Facility, P.O. Box: 0999, Coxsackie, New York 12051-0999.

2. On May 28, 2015, I placed and submitted a true and exact copy of the within document(s) which consist of the following: "To be notify of any and all issues that is likely to be raised and his (Defendant-appellant) direct appeal and to not submit the brief before seeing or reading that said brief.

In a properly sealed, post paid, wrapper and deposited same in an official depository of the United States Postal Service, said box being under exclusive care of the New York State Department of Correctional Services and is one established for the purpose of mailing correspondence, addressed for delivery to the following parties:

Del Atwell, Esq.39 5th StreetEast Hampton, N.Y. 11937

SWORN TO BEFORE ME THIS

24th DAY OF May 2015J. Lewis
NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OLE6265486

My Commission Expires 07/09/2016

Respectfully Submitted,

Craig Gabbidon
Din # 15-A-0150Coxsackie Correctional Facility
P.O. Box: 0999
Coxsackie, New York 12051-0999

EXHIBIT

E

EX-E

Craig Gabbidon 15A0150
Coxsackie Correctional Facility
P.O.Box 999
Coxsackie, N.Y. 12051

June 14, 2015

Del Atwell, Esq
39 5th Street
East Hampton, N.Y. 11937

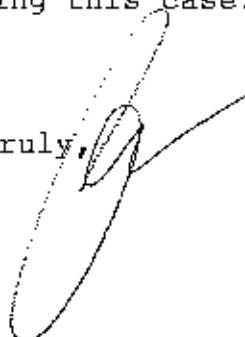
Re: App. No. 2015-00872

To Whom It May Concern:

I am sending you a few copies of some papers I have, a letter I sent to the Court, "Dutchess County" asking the Judge, Greller, to withdraw my plea. As you may see that this letter was made a few days after I was forced to take the plea. I am sending you copies of letters I received from the attorney representing me at the time of the plea, Susan Mungavin, in the letter I am sending you you can clearly see the neglect in my case and the ineffectiveness of her work. I hope these paper's matter in some way. I am hoping that they do, I have received the brief of appellant in the mail, I am naive and ignorant to the justice system and I do not know what to do, I am currently in the BOX-SHU and charges that do not have anything to do with me and my resource is limited because I can't go to the law library and I don't know if I should be putting together a supplemental brief. I would like you advise or opinion on the matter as soon as possible. I really need your help in fighting this case because my family need me, my wife is in the hospital dying, her health is getting worst and my kids have known one else to count on. I can't talk to them because we're in at and they don't let us use the phone. Sir, I am not making any copies of this letter

because I am hoping you are a husband and a father and you would understand my pain. I really need you help in these matter as they are very important to me in fighting this case.

Yours Truly,

A handwritten signature consisting of a stylized, flowing cursive script.

CC:File/cg

EXHIBIT

B

ACKNOWLEDGED AND TO BE INFORMED OF ANY AND ALL DECISION THAT IS
LIKELY TO BE MADE.

Bill Atwell
Attorney for Appellee
39 5th Street
East Hampton N.Y. 11937

EX-E

Date: July 1, 2015

RE: Acknowledged and to be informed of any and all decision that is likely to be involved.

Dear Sir/Madam,

This letter is respectfully submitted to you in regard to my previous attempt to establish contact. As you may know by now, I have tried twice before to establish contact with you and got no response. The attempt on the two different occasion is pertaining to my appellate case and the brief that you sent me date, May 29, 2015. My interest in the matter is that you sent me no instruction, nor advised me on any decision that you are making, you make no previous attempt to talk with me nor introduce yourself as my attorney that was appointed to me by the Appellate division, Second department.

Additionally, to my understanding it is prudent for the lawyer to keep the client informed of the progress of

the appeal and to discuss (either face to face or by letter) the issues that likely will be raised, but you have not made the attempt to do so.

I believe the attorney should consider additional contacts with the Client as the brief and record are being assembled, and should send the Client a copy of all brief being submitted on the appeal before the actual date of submission. I am asking to be acknowledged and to be involved in my appellate case and all decision and procedure that is being made at any appropriate time as it is necessary and important. I am asking you to please contact me as soon as possible and give me an up date on all that is being done pertaining to my appellate case. I am looking forward to hear from you. Thank you for your understanding and consideration in this matter.

Coxsackie, C.F.

P.O. Box 999

Coxsackie, N.Y. 12051-0999

Respectfully Submitted

Craig Gabaldon
Appellate

5-4-0150

CC: Personal file: c/g

EXHIBIT



DEFENDANT'S CONCERNS OF PARTICIPATION IN THE PERFECTING OF
THE APPELLATE BRIEF.

EX-6

Del Atwell, esq.,
39 5th Street
East Hampton, NY 11937

A.D. NO. 2015-00872

The People , etc., respondent
v. Craig Gabbidon, defendant
(Ind. No. 121-2013)

Re: Defendant's concerns of participating in the perfecting of the appellate brief.

Dear Del Atwell:

On or about June 4, 2015 I received a copy of your proposed appellate brief dated May 29, 2015.

Concerning this matter, the defendant would like to state that he is displeased that prior to the preparation of your proposed brief being sent, that you have not made any contact with him, or even sent an introductory letter informing that you have been assigned as the individual attorney to perfect his appeal.

Further, the defendant is displeased that you have not responded to any of his letters that was written to you before and after you have prepared the proposed brief, and thus I have not been advised on any decisions you have made, or have been allowed to participate in the perfecting of the appeal by submitting additional issues of merit that have not been represented in your appellate brief.

Mr. Atwell, it is my understanding that an attorney is to act as an advocate on behalf of his client, which requires that he keep his client informed of the progress of his appeal and to discuss with him the issues that are likely to be raised on appeal, and that he should consider additional issues that the client may have as the brief is being assembled.

The defendant is now concerned that one of hs issues that may be of significant merit is not represented in your brief. This issue concerns the defective indictment where the defendant was not given notice of the grand jury proceedings against him and was denied the right to testify. (See CPL § 190.50).

The defendant was also denied the right to counsel during the arraignment on his arrest in violation of his 6th Amendment right to counsel during a material stage of the criminal proceedings which has thereby served to abridge the defendant's right to testify before the grand jury. The defendant request that the arraignment of his arrest transcripts are obtained and that he be provided with a copy. These transcripts will show that the defendant was not represented by counsel at such a critical stage of the criminal action action. The defendant further respectfully request that you explore these facts and research the law on the matter for consideration of raising such in the appellate brief.

Additionally, If for some reason you decide not to raise this issue, please instruct the defendant in the procedure of filing a supplemental brief.

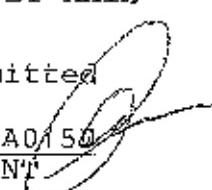
Lastly, It would be greatly appreciated if you could respond to the defendant's concerns in a timely matter.

ANNEXED HERETO PLEASE FIND AFFIDAVIT OF SERVICE BY MAIL

DATED: 9/10/16

Coxsackie, New York

Respectfully Submitted


CRAIG GABBIDON/15A0150
DEFENDANT-APPELLANT

Coxsackie, C.R.
P.O. BOX 999
Coxsackie, NY 12051-0999

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
ss:
COUNTY OF GREENE)

A.D. NO. 2015-00872
(Ind. No. 121-2013)

I, CRAIG GABBIDON, being duly sworn, deposes and says that on this 10 day of September, 2015, I served the attached legal document, entitled: "Defendant's concerns of participating in the perfecting of the appellate brief," upon Del Atwell, appellate attorney, by depositing the same, in the postal receptacles here at the Coxsackie Correctional Facility, in a properly addressed envelope, to be duly mailed via the United States Postal service, to the address set forth below, being the address designated for that purpose.

Dated: 9/10/15

Coxsackie, New York

Del Atwell, esq.,
39 5th Street
East Hampton, NY 11937
personal file: c/g

Respectfully submitted

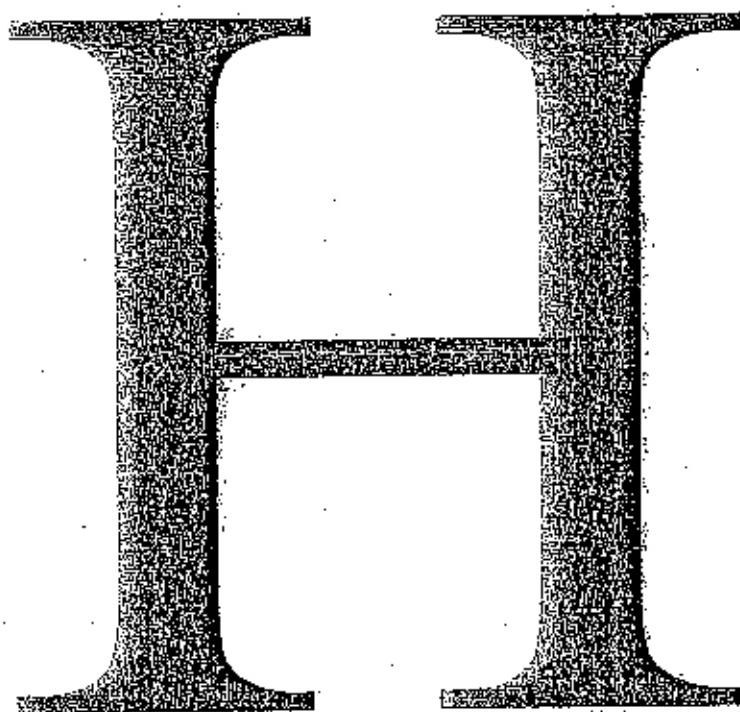
CRAIG GABBIDON/15A0450
DEFENDANT-APPELLANT

Coxsackie, C.F.
P.O. BOX 999
Coxsackie, NY 12051-0999

Sworn to before me this
10 day of September, 2015
Jackie A. Lewis
NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. O1LE6263486
My Commission Expires 07/09/20 16

EXHIBIT



**ASSISTANCE TO PROVIDE APPELLANT-DEFENDANT WITH COPIES OF
HIS FILE.**

Ex-H

Craig Gabbidon 15A0150
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, N.Y. 12051

September 10, 2015

Del Atwell, Esq
39 5th Street
East Hampton, New York 11937

Re: Assistance to provide appellant-defendant with copies of his file.

Dear Mr. Atwell:

Sir, as you know, I have tried everything to get in touch with you, but to no avail. I have write, I have tried calling you from the facility inmate phone, and I had my wife, My mother and my brother calling you and still yet, you have not return not one of there messages or phone calls.

Sir, the reason for those phone call was to help me retrieved those file I have been trying to get.

Furthermore, I has yet to receive a copies of the People response to my brief nor has you respond to any of my correspondence I have made to you over the months that's past.

You are being very unprofessional and I don't believe you're in my best interest nor have you ever.

ANNEXED HERETO PLEASE FIND AFFIDAVIT OF SERVICE BY MAIL

Thank You,

AFFIDAVIT OF SERVICE BY MAIL

People v. Gabbidon
App. No. 2015-00872

STATE OF NEW YORK)
ss:
COUNTY OF GREEN)

I, CRAIG GABBIDON, being duly sworn, deposes, that on this
10 day of September, 2015, I served the foregoing #2 page legal
documents, entitled: " Request for attorney's assistance to prov-
ide appellant-defendant with complete copy of his file pertain his
case ", by depositing the same in the postal services here at the
Coxsackie Correctional Facility, in a properly addressed envelope,
to be duly mail via the united state postal service to the address
set forth below, being the address designated for that purposed.

Date: 9/10/15

Coxsackie, New York

Respectfully Submitted,

CRAIG GABBIDON/15-A-0150
DEFENDANT

Del Atwell, Esq
39 5th Street
East Hampton, New York
11937

Coxsackie, C.F.
P.O. BOX 999
Coxsackie, NY 12051-0999

Sworn to before me this

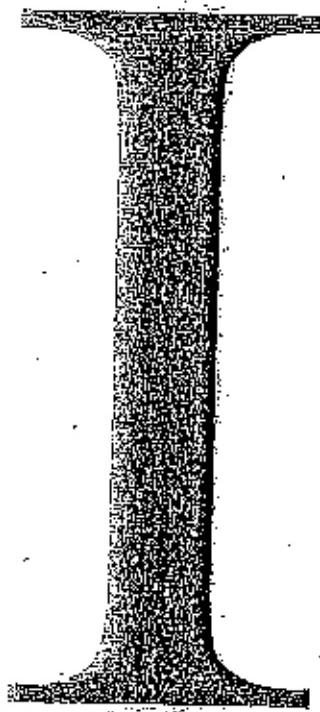
10th day of September, 2015



NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. 07E2626436
Commission Expires 07/09/2016

EXHIBIT



LETTER

EX-1

Del Atwell, Esq.
39 5th Street
East Hampton, NY 11937

A.D. No. 2015-00872

Ind. No. 121-2013

Dear Del Atwell, Esq.:

I'm writing to inquire about the status of my criminal appeal you are currently representing me on. However, I wrote several letters to you, as of yet, I still have not receive a response from you. As of right now, it's unknown to me on what's going on with my liberty. If in the event I don't receive a response from you, I have

no choice in the matter but to pursue further action to the New York State Bar Association, with a formal complaint. I leave this situation with ten (10) business days to respond, before taking further action.

Sincerely,

Date: 10/15/15

Craig Gabbett
Appellant/Defendant 15-A-0150

Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, NY 12051-0999

C.C: Del Atwell, ESA

Personal file: C/g

EXHIBIT

J

LETTER REQUESTING DOCUMENTS

EX-1

Dear Mr Dell Atwell, ESQ:

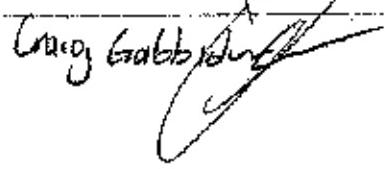
Ind. No. 121-2013

A.D. No. 2015-0087Z

Appellant - Defendant
15-A-0150

I am writing to you regarding your assistance in this Matter, Mr. Atwell. I am requesting copies of some of the legal papers you have on file for me on the case. I am requesting of you if possible, to please send me copies of all statement that was made by both the alleged victim, copies that was taken by the Poughkeepsie Police Department and the Hyde Park Police Department. This is very important, I would really appreciate it as it is very important to my case. I would like copies of Police reports and copies of the grand jury minutes, the pre-sentence minute and any other document you have. (Legal).

Sincerely,



Date: 10/21/15

Coxsackie C. F.

P.O. Box 999

Coxsackie, NY 12051

C.C: Dell Atwell, ESQ

EXHIBIT

K

REQUESTING OF LEGAL PAPERS

EX-K

COXSACKIE CORRECTIONAL FACILITY
P.O. BOX 999
COXSACKIE, N.Y. 12051-0999
CRAIG GABEIDON DIN # 15-A-0150

DEL ATWELL, ESG:
ATTORNEY FOR APPELLATE
39 5th STREET
EAST HAMPTON, N.Y. 11937

Date: Nov 9 2015

RE: Requesting of legal papers"

Dear Mr. Atwell,

I want to thank you for your time and effort that you put into my appellate brief, to my understanding, it is a good brief and with outstanding research on the points that you have raised so far, but there has been other issues that are of concern to me that must be raised on a pro se, and for that to be done, Sir, I would like copies of all legal paper works you have in your possession from the Dutchess County Court. I am asking if you can please provide me of an with the following documents below.

- 1) Police Reports of both police departments, (Poughkeepsie P.D. and Hyde Park P.D.)
- 2) Statements of both alleged victims, (before and after I made A statement),
- 3) Copies of the grand Jury Minutes, (Date of December 5, 2013 and January 22, 2014).
- 4) Pre-Sentencing minutes.
- 5) Copies from the lower court proceedings that show that I was arraigned without counsel during a material stage of the criminal proceedings.
- 6) I would like any copies you can or may provide me with that is pertaining to me not being notified of the grand jury proceeding.

7) I would like all available transcripts that you can or may make available to me be sent out to me at the address below.

COXSACKIE CORRECTIONAL FACILITY
P.O. BOX 999
COXSACKIE, N.Y. 12051-0999

I am requesting that the arraignment transcripts be obtained and that a copy be to me, Please.

If for some reason you cannot provide me with the information i'm requesting, Please let me know as soon as possible at a timely manner.

Respectfully Submitted
CRAIG GABBIDON / 15-A-0150
DEFENDANT-APPELLANT
IND. No. 121-2013
A.D. No. 2015-00872

C.C: Filed c/g
Personal Filed, Del Atwell

EXHIBIT

I

REQUESTING ASSISTANCE AND INFORMATION

Ex-L

COXSACKIE CORRECTIONAL FACILITY
P.O. BOX 999
COXSACKIE, N.Y. 12051-0999
CRAIG GARBIDON/DIN 15-A-0150

DEL ATWELL, ESQ.,
39 5th STREET
EAST HAMPTON, N.Y. 11937

Date: 2/18/18

Ind. No. 121-2013
App. No. 2015-00872

RE: Requesting Assistance and Information,

Dear Mr. Atwell, Esq.,

I write to you requesting information about my appeals, I am asking you if you have filed my Notice of Appeals with the Court of Appeals to please let me know. Due to the lack of communication between you and myself, I am not sure of the status of my case. I ask you to please notify me with the information I am asking you for, as there is a 30 days time period for it to be filed. I am also requesting a complete copy of my file be sent to me and or send me the files so I can make copies and return them back to you as soon as possible.

Thank you for your attention to this matter.

Sincerely

SWORN TO BEFORE ME THIS

18th DAY OF February 2016

J. Lewis

NOTARY PUBLIC

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. OIL00285486
My Commission Expires 07/09/20 16

STATE OF NEW YORK)
COUNTY OF GREENE)
ss.:)

I, Craig Goldblum, being duly sworn, deposes and says:

I am over eighteen (18) years of age and resides at the Coxsackie Correctional Facility, P.O.Box: 0999, Coxsackie, New York 12051-0999.

2. On 2/18/16, 2016, I placed and submitted a true and exact copy of the within document(s) which consist of the following: RE: "Requesting Assistance and Information,"

in a properly sealed, post paid, wrapper and deposited same in an official depository of the United States Postal Service, said box being under exclusive care of the New York State Department of Correctional Services and is one established for the purpose of mailing correspondence, addressed for delivery to the following parties.

Del Atwell Esq.
39 5th Street
East Hampton, NY 11937

App. No. 2015-00872

SWORN TO BEFORE ME THIS
10th DAY OF February 2016

O'Brien
NOTARY PUBLIC

Jackie A. Lewis
Nursing Public, State of New York
Qualified in Albany County
No. OILE6268484
My Commission Expires 07/03/2011

Respectfully Submitted,

Pin # 13-A-02150

Coxsackie Correctional Facility
P.O. Box: 0999
Coxsackie, New York 12051-0999

EXHIBIT

M

FREEDOM OF INFORMATION REQUEST

People v. Gabbidon
App. No. 2013-00872
Ind. No. 121-2013

EX-M

FREEDOM OF INFORMATION REQUEST

To: Del Atwell, Esq.
39 5th Street
East Hampton, N.Y. 11937

Date 2/24 2016

From: Craig Gabbidon 15-A-0150
Correctional facility
Consecutive, NY 12050

Dear Sir or Madam:

This is a request for Information under the Freedom Of Information Law, Pursuant to the Public Officer Law, Article 6, Section 84-90/ and the Personal Protection Privacy Law; Article 6-A Section 91-99/ Open Meeting Law, Article 7, Section 100-111/ and the U.S.C.A. 552.

I wish to obtain the following information and records:

"I hereby request of a Complete Copy of My records
and Copy of the People's response to My brief."

If any and/or all of my request is denied, please list the exemptions. If you determine that some portion of this request is exempt, I will expect, as the Act provides, that you will provide me with the remaining Non-Exempt portions or materials. I, of course reserve the right to appeal any determination to withhold any/all information and expect that you will provide me with the address and office where my appeal may be forwarded.

As your agency should be cognizant, the Amended Freedom Of Information Act requires that you shall reduce, or waive, search and/or copying fees when the release of the required information is in the Public interest. It is my belief that the above requested information falls into this category. In addition, the Act requires that you reply within five (5) days of my request being received. In the event that my request is denied please provide me with the name and address to whom I am to forward my appeal to and to the attention of.

Thank you for your time and anticipated cooperation in this matter.

Respectfully,

Craig Gabbidon 15-A-0150

Ind. At. 121-2013

STATE OF NEW YORK
COUNTY OF

Sworn before me this

24 Day of February, 2016

J. Lewis
NOTARY

Jackie A. Lewis
Notary Public, State of New York
Qualified in Albany County
No. 01640646
My Commission Expires 07/09/2016

People v. Miller, 62 A.D.3d 1047, 878 N.Y.S.2d 489 (2009)

A defendant's decision to plead guilty to robbery in the second degree was not knowing, voluntary, and intelligent, requiring vacatur of the plea and reversal of the judgment of conviction, where the defendant, who was a second felony offender, was incorrectly informed that he would receive three years of PRS, when by operation of law he was required to receive a term of five years of PRS.

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People v. Ciccarelli, 32 A.D.3d 1175, 822 N.Y.S.2d 186 (4th Dept. 2006)

The defendant was entitled to withdraw his guilty plea, ~~to the~~ and to vacation of the sentence, where the sentence was illegal because the minimum

EXHIBIT

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REQUESTING COPIES OF THE PEOPLE'S RESPONSE TO APPELLANT'S BRIEF

EX-N

COXSACKIE CORRECTIONAL FACILITY
P.O. BOX 999
COXSACKIE, N.Y. 12051
CRAIG GABBIDON/ DIN # 15-A-0150

March 4, 2016

DEL ATWELL, Esq
Attorney At Law

39 5th Street
East Hampton, NY 11937

Re: People v. Gabbidon
Ind. No. 121-2013
App. No. 2015-00872

Dear Sir/Madam,

I am writing to you in regards to your response of my letter date on Feb 18, 2016, and that since then I have receive a copy of the served application to the Court of Appeals on January 31, 2016. However, I am still waiting for a copy of the District Attorney response to the Appellate Brief that was filed, and the copies I have ask for of my case file. Once again I ask that you please provide me with a complete copy of all documents and materials that you have pertaining to my case. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is being denied or ignored, please inform me of the reason for it being denied and ignored in writing and provide the name and address of the person or body to whom I should contact directly.

Enclosed is a copy of the letter I received from the District attorney's office directing me to you for the imformation I am requesting.

Jacqueline A. Lewis
Jacqueline A. Lewis
Plaintiff, State of New York
On Behalf of Albany County
No. CR-F435486
My Commission Expires 07/09/20

Respectfully Submitted,

[Signature]

ANNEXED HERETO PLEASE FIND AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK

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COUNTY OF GREENE

L. CRAIG GABBIDON being duly sworn, deposes and says:

I. I am over eighteen (18) years of age and resides at the Coxsackie Correctional Facility, P.O.Box: 0999, Coxsackie, New York 12051-0999.

2. On March 4, 2016, I placed and submitted a true and exact copy of the within document(s) which consist of the following: "People v. Gabbidon" Copies of District Attorney response to Appellant Brief and copies of all legal documents and materials that is pertaining to my case. Ind. No. 121-2013 in a properly sealed, post paid, wrapper and deposited same in an official depository of the United States Postal Service, said box being under exclusive care of the New York State Department of Correctional Services and is one established for the purpose of mailing correspondence, addressed for delivery to the following parties.

App. No. 2015-00872

DEL ATTWELL, ATTORNEY AT LAW

39 5th Street

~~EAST HAMPTON, NY 11937~~

SWORN TO BEFORE ME THIS

DAY OF March 2016

NOTARY PUBLIC

Respectfully Submitted,

Craugastor Gabaldon

Din # 15 A 0160

Coxsackie Correctional Facility

P.O. Box: 0999

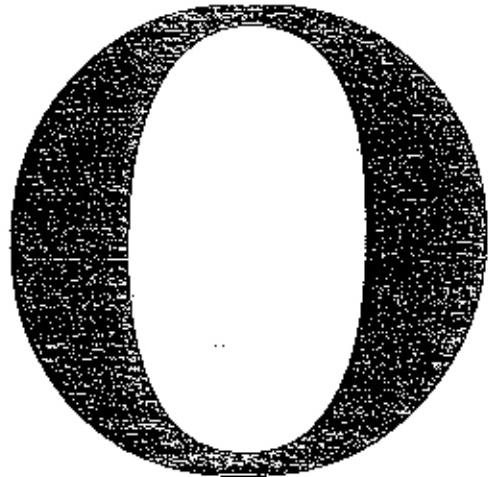
Coxsackie, New York 12051-0999

Jackie A. Lewis
Nancy Fazio, State of New York
Cecile M. Tracy Cooney

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81-242 modern English 07/08/20

EXHIBIT



TERMINATION LETTER

EX-O

DEL ATWELL

ATTORNEY AT LAW

39 5TH STREET

EAST HAMPTON, NY 11937

631-267-2067

May 6, 2016

Craig Gabaldon -15A0150

Coxsackie CF

PO Box 990

Coxcackie, NY 12051-0999

You are mistaken. You have been timely advised throughout. Once again, I am forwarding the Order Denying Leave sent on April 10, 2016. My representation as appellate counsel is now terminated.

EXHIBIT

P

LETTER TO THE APPELLATE COURT, CLERK OF THE COURT
